IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10828 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHADRESHBHAI ASHWINBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10828 of 2004

MS SUBHADRA G PATEL for Petitioner

MS HANSA B.PUNANI, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 28/12/2004

ORAL JUDGEMENT

Heard Ms.Subhadra G.Patel, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP, appearing on behalf of the respondents. Ms.Hansa

Punani, learned AGP has tendered today an affidavit-in-reply dated 30th November, 2004, filed by Commissioner of Police, Surat City, the same is taken on record. I have considered the averments of the petition as well as of the affidavit.

2. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 11th April, 2004, passed by the Police Commissioner, Surat City, Surat, under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act'). The petitioner is branded as a "bootlegger" within the meaning of Section 2(b) of the Act.

3. While passing the order of preventive detention under challenge, the detaining authority has considered the fact of registration of an offence punishable under the provisions of Bombay Prohibition Act being C.R.No.III - 148/04 by Athwa Lines Police Station, Surat, on 22.3.2004. Over and above, the fact of registration of these offences, two statements placed by the sponsoring authority recorded from the members of the public on 29th March, 2004, are also have been considered.

4. The legality and validity of the order is challenged on various grounds mentioned in the memo of petition. However, Ms.Subhadra Patel, learned advocate for the petitioner has concentrated her arguments mainly on the ground that, in reality the statements of two witnesses have been recorded mechanically and only with a view to create case for preventive detention by the sponsoring machinery. On 23rd March, 2004, the petitioner was arrested and was enlarged on bail by competent court on 29th March, 2004. It is argued that, as the petitioner was enlarged on bail on 29th March, 2004, the statement of two witnesses have been recorded on that very day mechanically and, therefore, the same cannot be said to be a statement providing of any contemporaneous cogent material as to the activities of bootlegging dangerous to the maintenance of public order. There is no adequate material recorded satisfaction to the effect that involvement of the present petitioner in a solitary offence was an activity prejudicial to the maintenance of public order.

5. It is rightly argued that, in new set of the facts, a ratio of the decision of this Court in the case of Sohanlal Surajaram Visnoi Vs. State of Gujarat

reported in (2003) 2 GHJ 490 would squarely help the present petitioner wherein this Court in paras 4 and 7 observed as under:

"para.4 Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Article 22(1) and 22(2) of the Constitution are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under preventive detention law.

"para 7 At the outset, it may be noted that the contention advanced on behalf of the petitioners that no preventive detention order can be recorded in a solitary incident or instance or offence cannot be accepted in toto. The detaining authority can pass the order of detention even on the basis of a solitary incident or instance, provided there is justifiable subjective satisfaction on objective material and consideration that such incident or offence is likely to create disturbance of "public order" and which needs to be controlled and curbed preventively. There must be convincing reasons and justifiable material that the impugned activity or action is likely to cause adverse and prejudicial impact on the maintenance of "public order". Emphasis is laid on "Public order" and not "law and order" which belonds to the realm of general law. After having taken into account the statutory definitions of the persons branded as "bootlegger" or "dangerous person" under the PASA Act, and detailed factual matrix of each case the solitary incident or instance in question in

these petitions has not been shown or spelt out from the record as affecting the "public order" or adverse to the maintenance of "public order" or likely to create public disturbance or prejudicial or adverse to the maintenance of "public order" and therefore, the continued detention of the detenus in each case has not been shown to be justifiable, and in this context, in exercise of the powers under Article 226 of the Constitution of India, this Court is left with no alternative in this group of petitions, but to quash and set aside the orders in each matter, with the result that all the petitions are required to be allowed while quashing and setting aside the detention orders passed against detenus in this group."

6. Though the order is assailed on various grounds, it is not necessary to enter into the discussion of other grounds, as the Court is of the view that the petition should be allowed and the preventive detention order requires to be quashed and set aside on above sole ground.

7. In view of the above, the present petition is allowed. The order of detention dated 11th April, 2004, passed by the respondent No.2 herein is quashed and set aside and the petitioner-detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(C.K.Buch, J.)

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